

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

PICCOLO, et ano.

Plaintiff,

- against -

TOP SHELF PROVISIONS, CO., INC., et al.

Defendants.

VERDICT SHEET

16 CV 6930 (GRB)

November 13, 2018

GARY R. BROWN, UNITED STATES MAGISTRATE JUDGE.

According to the principles as charged by the Court and the facts as you find them, please answer the following questions:

**I. LIABILITY**

Defendant TOP SHELF PROVISIONS CO., INC. ("TOP SHELF") has stipulated that it was an employer of Plaintiffs at all times relevant to this action. Defendants RICH DAHLEM and ANTHONY CICCARI deny that they were an employer of the Plaintiffs at any time. Therefore, please answer the following question for Defendants RICH DAHLEM and ANTHONY CICCARI only:

1. Have the Plaintiffs established by a preponderance of the evidence that the Defendant **RICH DAHLEM** was their employer during the period of time relevant to this lawsuit?

YES X NO \_\_\_\_\_

*If your answer to question this question is "no," then you have found a verdict in favor of Defendant Rich Dahlem and are directed not to answer any further questions concerning Rich Dahlem.*

2. Have the Plaintiffs established by a preponderance of the evidence that the Defendant **ANTHONY CICCARI** was their employer during the period of time relevant to this lawsuit?

YES X NO       

*If your answer to question this question is "no," then you have found a verdict in favor of Defendant Anthony Cicciari and are directed not to answer any further questions concerning Anthony Cicciari.*

3. Have the Plaintiffs established by a preponderance of the evidence that the Defendant(s) violated the Fair Labor Standards Act and the New York Labor law by failing to pay the Plaintiffs overtime wages?

	PICCOLO		SUDLOW	
	YES	NO	YES	NO
TOP SHELF		X		X
[RICH DAHLEM]		X		X
[ANTHONY CICCARI]		X		X

4. Have the Plaintiffs established by a preponderance of the evidence that at the time each was hired, the Defendant(s) violated the New York Labor Law by failing to provide a written Time of Hire Wage Notice, including, among other things, their rate of pay and the basis thereof?

	PICCOLO		SUDLOW	
	YES	NO	YES	NO
TOP SHELF	X		X	
[RICH DAHLEM]	X			X
[ANTHONY CICCARI]		X	X	

5. Have the Plaintiffs established by a preponderance of the evidence that the Defendant(s) violated the New York Labor Law by failing to provide them with pay stubs containing appropriate information, when they received wages?

	PICCOLO		SUDLOW	
	YES	NO	YES	NO
TOP SHELF	X		X	
[RICH DAHLEM]	X		X	
[ANTHONY CICCARI]	X		X	

**If you answered “No” to ALL of questions 1 through 5, you have found in favor of the Defendants. In that event, do not answer any further questions and the foreman should sign and date the verdict sheet and notify the Court in writing that you have reached a verdict and are ready to return to the Courtroom to announce your verdict.**

**If you answered “Yes” to any or all of questions 1-5, you have reached a verdict in favor of the Plaintiffs on that particular claim or claims. In that event, please proceed to the damages section which follows, for those claims to which you responded “yes.”**

## II. DAMAGES

### Willfulness

*If you answered “Yes” to any of questions 1 through 5, please answer the following question.*

6. Have the Plaintiffs proven by a preponderance of the evidence that one or more of the Defendants knew of or showed reckless disregard for the Fair Labor Standard Act and the New York Labor Law overtime requirements?

	PICCOLO		SUDLOW	
	YES	NO	YES	NO
TOP SHELF		X		X
[RICH DAHLEM]		X		X
[ANTHONY CICCARI]		X		X

**Good Faith**

*If you answered "Yes" to any of questions 1 through 5, please answer the following question.*

7. Have the Defendant(s) established by a preponderance of the evidence that they acted in good faith and objectively reasonable grounds in failing to pay Plaintiff(s) overtime wages?

	PICCOLO		SUDLOW	
	YES	NO	YES	NO
TOP SHELF		X		X
[RICH DAHLEM]		X		X
[ANTHONY CICCARI]		X		X

**The FLSA and NYLL Overtime Claims**

8. Have the Defendant(s) established by a preponderance of the evidence the existence of an agreement governing overtime pay with the Plaintiffs?

YES X NO       

9. If you have found that the Plaintiffs have established that they are entitled to compensation for overtime pay, please list the number of average hours per week that the Plaintiffs have established they worked, the number of uncompensated overtime hours per week, the overtime rate used to calculate their award, and the total amount awarded:

	AVERAGE HRS/WEEK	NUMBER OF UNCOMPENSATED OVERTIME HRS/WEEK	OVERTIME RATE	NUMBER OF WEEKS	TOTAL AMOUNT AWARDED
PICCOLO	50	0	N/A	185.5	\$ 0
SUDLOW	50	0	N/A	25.0	\$ 0

PLEASE IDENTIFY WHICH CORPORATE AND/OR INDIVIDUAL DEFENDANT(S)  
YOU FIND RESPONSIBLE FOR THESE DAMAGES:

N/A

**The NYLL Time of Hire Wage Notice Claim**

*If you answered "yes" to any of question 4, please answer the following question:*

10. How much do you award the Plaintiff(s) for Defendant(s)' failure to provide a New York Labor Law Time of Hire Wage Notice when they were hired? (\$50.00 per day with a maximum of \$5,000.00)

	Total Awarded	Defendant(s) responsible
PICCOLO	\$5,000.00	Top Shelf Rich Dahlem
SUDLOW	\$5,000.00	Top Shelf Anthony Cicclari

**The NYLL Failure to Provide Pay Stubs Claim**

*If you answered "yes" to any of question 5, please answer the following question:*

11. How much do you award the Plaintiff(s) for Defendant(s)' failure to provide adequate pay stubs? (\$250.00 per week with a maximum of \$5,000.00)

	Total Awarded	Defendant(s) responsible
PICCOLO	\$5,000.00	Top Shelf Rich Dahlem Anthony Cicciari
SUDLOW	\$5,000.00	Top Shelf Rich Dahlem Anthony Cicciari

12. Did Plaintiffs establish that improper deductions were made from their pay?

YES \_\_\_\_\_

NO X

### Defenses

13. Have the Defendant(s) established by a preponderance of the evidence that, viewed from the mind of the out of state shipper, the shipments handled by Plaintiff(s) were being made to a warehouse for future delivery to an identified customer?

YES \_\_\_\_\_

NO X

14. Have the Defendant(s) established by a preponderance of the evidence that Plaintiffs' primary duty was to make sales?

PICCOLO		SUDLOW	
YES	NO	YES	NO
<u>X</u>		<u>X</u>	

15. Have the Defendant(s) established by a preponderance of the evidence that Plaintiff

LOUIS PICCOLO was a highly compensated employee?

YES \_\_\_\_\_

NO X

**Foreperson please sign and date the verdict sheet and advise the Court by note that you have reached a verdict, and you are ready to return to the Courtroom to announce your verdict.**

Dated: Central Islip, New York  
November 15, 2018

  
Foreperson